

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

STANDING ORDER 2016-05

AMENDMENT TO MASSACHUSETTS LOCAL BANKRUPTCY RULE 9018-1 IMPOUNDMENT
OF PAPERS

IT IS ORDERED that effective April 1, 2016 pending final adoption, Massachusetts Local Bankruptcy Rule 9018-1 shall be deemed amended on an interim basis to read in its entirety:

IMPOUNDMENT OF PAPERS

- (a) ***Impoundment.*** For purposes of this rule, the Court shall not distinguish between “impoundment” and “under seal” and those terms shall be considered interchangeable. This rule refers to motions to impound documents. The requirements of this rule also apply to motions to file documents under seal. For good and sufficient cause, the Court may order that some or all of the papers in a case or in any adversary proceeding be impounded by the Clerk. Documents impounded shall be maintained by the Clerk separate and apart from files to which the public has access.
- (b) ***Request to Impound Documents.*** The request to impound documents is a two-step process:
 - (1) ***Motion to Impound.*** A party seeking to impound documents must file a motion to impound with the Court with notice to parties in interest, unless the Court orders otherwise pursuant to paragraph (c) of this rule. The motion to impound shall include: (i) a statement under oath setting forth the grounds for impoundment, (ii) a statement regarding the duration of the impoundment, and (iii) a proposed order which identifies any parties other than the moving party who will have access to the documents. ***The documents sought to be impounded must not be attached to the motion to impound and the information sought to be impounded should not be disclosed in the motion to impound.***
 - (2) ***Documents Sought to be Impounded.*** Immediately after filing the motion to impound described in paragraph (b)(1) of this rule, the party seeking impoundment must hand deliver the documents sought to be impounded to the Clerk’s Office. The documents sought to be impounded must be delivered in a sealed envelope or container conspicuously marked “FILED SUBJECT TO

PENDING IMPOUNDMENT MOTION.” The documents shall be considered provisionally impounded, and shall remain provisionally impounded until the Court rules on the motion to impound described in paragraph (b)(1) of this rule.

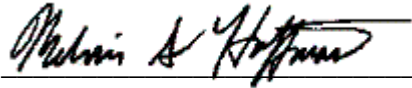
- (c) ***Notice of the Motion to Impound.*** A party filing a motion to impound must serve the motion, but not the documents sought to be impounded, on all parties entitled to notice, unless the party seeking impoundment also requests in the motion to impound approval of limited notice or ex parte relief.
 - (1) ***Limiting Notice.*** A party may seek to limit notice of a motion to impound if appropriate. If limited notice of the motion to impound is requested, the party seeking to limit notice shall (i) request that limitation in the motion to impound and (ii) set forth good cause for limiting notice. A party seeking to limit notice of the motion to impound shall serve that motion to impound and notice of any hearing as directed by the Court.
 - (2) ***Ex Parte Relief.*** If ex parte relief is requested in the motion to impound, the moving party must comply with MLBR 9013-1(h).
- (d) ***Order to Impound Documents.*** Documents will not be impounded, other than provisionally, without a Court order. Any order of the Court granting a motion to impound shall (i) direct the Clerk to impound the documents and (ii) identify any parties other than the moving party who may have access to the documents that are impounded.
- (e) ***Handling and Disposition of Documents Sought to be Impounded.*** Upon receipt by the Clerk of the documents sought to be impounded pursuant to paragraph (b) of this rule, the documents shall be delivered to the Court and the Court shall review the documents sought to be impounded in camera.
 - (1) ***Disposition of Documents when Relief is Denied.*** To the extent that the motion to impound is denied, the documents sought to be impounded shall be returned to the party that filed the motion to impound. If those documents are subsequently refiled, they shall be filed with other pleadings in the case to which public access is allowed.
 - (2) ***Disposition of Documents when Relief is Granted.*** To the extent that the motion to impound is granted, the order granting impoundment shall be filed with the pleadings in the case. The impounded documents shall be transferred to the Clerk for special storage. The Clerk shall attach to the envelope or other container holding the impounded material a copy of the order granting impoundment and copies of any subsequent orders relating to the impounded materials. Thereafter, access to the impounded documents shall be limited to the Court, the Clerk, the party for whose benefit the order was granted, any other

party authorized under the impoundment order, and any party who receives relief from the impoundment order in whole or in part.

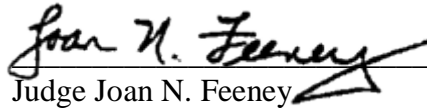
- (3) ***Disposition of Documents Upon Expiration of Impoundment Order.*** *If the impoundment order expires by its terms but provides no arrangements for post-impoundment custody of the impounded papers, or if the impoundment order provides for post-impoundment custody of the impounded papers, but the impounded papers are not timely retrieved, the Clerk shall provide notice of no less than forty-five (45) days to the party for whose benefit the impoundment order was granted, or his, her or its attorney, that the impounded documents shall, in the absence of a timely objection or retrieval of the documents prior to the expiration of the notice period, be destroyed.*
- (4) ***Disposition of Documents Impounded If no Expiration.*** *If the impoundment order does not provide for an expiration by its terms, then within sixty (60) days after the closing of the case or adversary proceeding, the Clerk shall provide notice of no less than forty-five (45) days to the party for whose benefit the impoundment order was granted, or his, her or its attorney, that the impounded documents shall, in the absence of a timely objection or retrieval of the documents prior to the expiration of the notice period, be destroyed.*
- (f) ***Motion to Impound a Previously Filed Document.*** *A party wishing to impound a document previously filed with the Court shall file a motion to impound in compliance with paragraphs (b) and (c) of this rule.*
- (g) ***Relief from Impoundment Order.*** *Any party that seeks relief from an impoundment order shall do so by motion with notice to include the party for whose benefit the order was granted. Any order granting relief from the impoundment order shall identify the additional parties granted relief. The Clerk shall attach any additional order to the impounded material.*
- (h) ***Impoundment by Court Sua Sponte.*** *The Court may, sua sponte, for good and sufficient cause, impound any document pursuant to this rule, or order that the document not be released for online viewing.*
- (i) ***Attachments or Exhibits To Proofs Of Claim or Other Documents.*** *The Clerk of this Court or his or her delegate(s) may on his or her own initiative and without the necessity of any separate order, cause the attachment or exhibit to a proof of claim or to any other document filed with this Court to be imaged as a “private event” under the Court’s electronic filing system in the event that the attachment or exhibit contains medical information with respect to any person or otherwise contains information whose unrestricted disclosure may not be appropriate. Nothing herein shall constitute an affirmative obligation by the Clerk to locate or identify such information*

in any attachment or exhibit or preclude any party in interest from requesting that the Court terminate the “private event” status of the attachment or exhibit and make the information public.

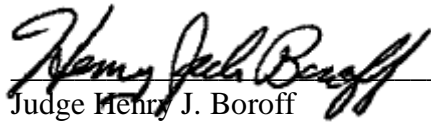
IT IS SO ORDERED:



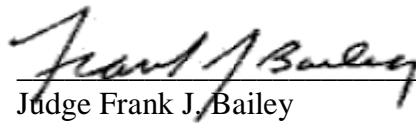
Chief Judge Melvin S. Hoffman



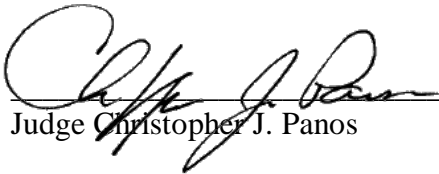
Judge Joan N. Feeney



Judge Henry J. Boroff



Judge Frank J. Bailey



Judge Christopher J. Panos

Dated: March 4, 2016